

REMARKS

Claims 38-42 and 44-63 were rejected. New claims 64-81 were added. For simplicity in presenting the amendment, claims 38 and its dependent claims were cancelled and replaced with corresponding new claim 64 and its dependent claims. Claims 59-63 were also cancelled. Claims 49, 50-53, 55, and 57-60 were amended. Claims 61-63 were cancelled.

The amendment to claim 49 makes explicit that there different types of ticket-based lottery games in the independent subsystems, although Applicant believes this feature was already implicit in the unamended claim. Claim 50 was amended to properly depend from claim 49. Claim 51 was amended to improve clarity, in particular to make it more clear that the plurality of ticket games are of different types, although Applicant believes this feature was already implicit in the unamended claim. The prize pool limitations were moved from claim 51 to its dependent claims. Claim 57 and claim 59 were amended in a manner similar to claim 51, again to improve the clarity of what was believed to be the implicit feature of having different types of instant games. Claim 60 was amended to correct various informalities.

The amended and new claims do not add new matter and are supported by the originally filed disclosure. In view of the foregoing amendments and the following remarks, Applicant respectfully submits that all of the presently pending claims are allowable. Reconsideration of the Application is respectfully requested.

1. Rejection of Claims 38-63 (35 U.S.C. § 103(a))

Claims 38-42 and 44-63 stand rejected under 35 U.S.C. § 103(a), the Office Action alleging that these claims are unpatentable over U.S. Patent No. 5,944,606 to Gerow (“Gerow”) in view of U.S. Patent No. 5,112,050 to Koza et al. (“Koza”) in further view of U.S. Patent Re. 35,864 to Weingardt (“Weingardt”). The Applicant respectfully traverses this assertion and submit that the rejections should be withdrawn for at least the following reasons. Since claim 38 was cancelled as has been replaced by corresponding claim 64 to simplify the amendment, claim 64 is discussed here in place of claim 38. Claim 64 recites:

64. (New) A gaming system, comprising:
a plurality of *different types* scratch-off instant ticket games;

a plurality of scratch-off instant game tickets, *each ticket being associated with at least one of the plurality of types of scratch-off instant ticket games*, each ticket having indicia for use in the play of the associated scratch-off instant ticket game, and *each ticket having a respective machine readable ticket code unique to that ticket in said system*;

a shared jackpot game which tickets from the plurality of scratch-off instant ticket games of different types are eligible to win;

a central computer storing a prize code indicating a ticket which is a winner of the jackpot game; and

a plurality of distributed terminals configured to dispense the game tickets, the terminals being in communication with the central computer, each of said terminals having at least one code reader configured to read said machine readable ticket code from each of said game tickets when the ticket is dispensed, the terminals configured to indicate *a dispensed ticket is a winner of the jackpot game based on a comparison of the machine readable ticket code from the dispensed ticket and the prize code*.

Applicant's claim 64 specifically recites that the jackpot game is "shared" and can be won by tickets from *different types* of scratch-off instant-ticket games. Applicant submits that this feature was implicit in unamended claim 38, but has been highlighted by the clarifying amendment. This feature is neither taught nor suggested by the cited Gerow reference, nor its proposed combination with Weingardt and Koza. Gerow has only a single type of pull-tab card. Even Gerow's multi-game pull-tab cards, pointed out in the most recent Office Action, have multiple plays for the *same type* of game. The addition of Weingardt or Koza does not correct this deficiency of Gerow as a reference.

Applicant also maintains the traversal of the proposed combination of Weingardt and Koza with Gerow from the previous Office Action for similar to reasons to those previously presented.

Claims 65-81 depend from claim 64 and therefore should be allowable for at least the same reasons.

Applicant's claim 49, 51, and 57 have all been amended to further clarify that there are different types of base games which participate in a "shared" jackpot game which can be won by tickets from different instant games. Accordingly, these claims are neither taught nor suggested by the cited references, nor by their proposed combination. In particular claim 51, as amended, recites:

51. A method for facilitating the play of *a shared jackpot game* which can be won by tickets from any of a plurality of *different types* of instant ticket-based lottery games, comprising:

storing a plurality of gaming tickets for the plurality of instant ticket-based lottery games *of different types* in each of a plurality of gaming ticket

dispensers, each of said tickets bearing indicia for use in the play of one of the instant ticket-based lottery games and each of said tickets also having a respective machine readable ticket code unique to that ticket;
dispensing a ticket for one of the plurality of instant ticket-based lottery games from one of the plurality of gaming ticket dispensers;
reading the machine readable ticket code on the ticket;
based on the machine readable ticket code read from the ticket, determining if the ticket is a winner in the shared jackpot game; and
responsive to determining that the ticket is a winner in the shared jackpot game, informing the recipient of said ticket that the ticket is a winner in the shared jackpot game.

Gerow generally describes a pull-tab game with a jackpot. Although Gerow also describes a variant of his system with multiple machines, these machines share a single pull-tab game with a single cardset – i.e. a single game, rather than a plurality of different types of such games. *See, e.g.*, Gerow at 7:33-42. Thus, Gerow neither teaches nor suggest combining a plurality of different types of instant ticket lottery games with a shared jackpot game that employs a unique code on each ticket. The proposed combination with Weingardt and Koza, does not teach or suggest using a unique code on a plurality of different types of instant ticket-based lottery games for use in a shared jackpot game.

Claim 50 depends from claim 49, Claims 52-53 and 55-56 depend from claim 51, and claim 58 depends from claim 57, and therefore should be similarly allowable for at least the same reasons as their respective parent claims.

Claim 59 recites that the game ticket is a future draw lottery ticket. Although Gerow mentions future draw lottery tickets in the background section, Gerow does *not* teach or suggest using a future draw lottery ticket with a progressive jackpot game like the one described in Gerow. Gerow's progressive game depends on having a pre-printed "jackpot" card as part of a deck a pre-printed pull-tab cards. It is unclear how this approach would be combined with a future draw lottery game. In fact, such a change would fundamentally change the nature of how Gerow's system operates. If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. MPEP 2243.01 (citing *In re Ratti*, 270 F.2d 810 (CCPA 1959)). Thus, Applicant respectfully submits that that the proposed modification of Gerow's system to provide a progressive jackpot system into a future draw lottery game, because it fundamentally changes the nature of how Gerow's disclosed system operates, does not

render Applicant's claim 59 prima facie obvious. Withdrawal of the rejection is therefore respectfully requested.

Claim 60 recites that whether the game ticket wins the jackpot game is determined randomly at the time the game ticket is dispensed. This feature is neither taught nor suggested by Gerow. Although the Office Action contends that when the ticket is determined to be a winner is an obvious design variation, Applicant respectfully disagrees.

Gerow relies on a *pre-printed jackpot card* to determine whether a ticket is a jackpot winner. Thus which ticket is a jackpot winner is entirely pre-determined when the tickets are printed. Changing Gerow's system to randomly determine jackpot winner's at the time of dispensing completely changes the operating approach of Gerow's game. Accordingly, an ordinary artisan would not be lead to modify Gerow in this fashion, as it would completely alter the nature of Gerow's game. In particular, one reason pull-tab games, like the one described in Gerow, are used is that players and operators want to guarantee that there will be a pre-determined number of winners of various types in a particular deck. Gerow even describes this in his specification:

A sign or poster 32, such as shown in FIG. 5, is normally provided in the general area where the cards are being dispensed to allow players to monitor what winning cards remain to be distributed. The sign includes a listing of each of the winning cards, and, as each winning card is redeemed, the operator of the game covers one of the listings for that sub-class of card, as shown at 34.

Gerow, 4:23-30. Changing to a random winner determination at the time of dispensing fundamentally changes the principle of operation of Gerow's pull-tab game. Accordingly, the proposed modification of Gerow does not render Applicant's claim 60 prima facie obvious. Withdrawal of the rejection is respectfully requested.

Conclusion

In light of the foregoing, it is respectfully submitted that all of the presently pending claims are in condition for allowance. Entry of the amendment, and prompt reconsideration and allowance of the present application are therefore earnestly solicited. The Office may charge any fee arising in connection with this paper to the Deposit Account 11-0600 of Kenyon & Kenyon LLP. The Examiner is invited to telephone Applicant's undersigned representative if any question arises concerning the present application.

Respectfully submitted,

KENYON & KENYON LLP

Dated: Jan. 3, 2007

By: 

Andrew L. Reibman
(Reg. No. 47,893)

One Broadway
New York, NY 10004-1050
Phone: 212-425-6486
Fax: 212-425-5288

CUSTOMER NO. 26646